

# State of Colorado



Bill Owens  
Governor

John Zakhem  
Board Chair

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Board Director

State Personnel Board  
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## AGENDA PUBLIC BOARD MEETING October 18, 2005

A public meeting of the State Personnel Board will be held on **Tuesday, October 18, 2005, at the Colorado State Personnel Board, 633 17th Street, Suite 1400, Courtroom 1, Denver, Colorado 80202-3604.** The public meeting will commence at 9:00 a.m.

Reasonable accommodation will be provided **upon request** for persons with disabilities. If you are a person with a disability who requires an accommodation to participate in this meeting, please notify Board staff at 303-866-3300 by October 13, 2005.

### I. REQUESTS FOR RESIDENCY WAIVERS

A. October 1, 2005 Report on Residency Waivers

Reports are informational only; no action is required.

### II. PENDING MATTERS

There are no pending matters before the Board this month.

### III. REVIEW OF INITIAL DECISIONS OR OTHER FINAL ORDERS OF THE ADMINISTRATIVE LAW JUDGES OR THE DIRECTOR ON APPEAL TO THE STATE PERSONNEL BOARD

There are no Initial Decisions or Other Final Orders of the Administrative Law Judges or the Director on appeal to the Board this month.

### IV. REVIEW OF PRELIMINARY RECOMMENDATIONS OF THE ADMINISTRATIVE LAW JUDGES OR THE DIRECTOR TO GRANT OR DENY PETITIONS FOR HEARING

A. Bridget G. Watkins v. Department of Public Health and Environment, Division of Disease Control and Environmental Epidemiology, State Personnel Board case number 2005G078.

Complainant was formerly employed as a probationary Health Professional II by the Department of Public Health and Environment, Division of Disease Control and Epidemiology. She filed a petition for hearing on February 10, 2005, arguing that she was denied relief in a Step II grievance decision and that the final grievance decision was arbitrary and capricious because: 1) Respondent breached its promise to retain

Complainant at the same, or substantially the same, pay rate, a promise upon which Complainant relied; 2) Respondent failed to consider all of the evidence and failed to use due diligence in seeking the truth; 3) Respondent abused its discretion in making its decision and otherwise acted improperly; 4) Respondent's decision had no rational basis and no competent evidence to support it; and 5) Respondent's decision was contrary to law/regulation, including, but not limited to Rule 3-1, *et seq.*

Respondent argues that Complainant failed to meet her burden of showing that valid issues exist that merit a full hearing and that the Board should deny Complainant's petition for hearing. Respondent further requests an award of attorney fees and costs.

On September 28, 2005, the Administrative Law Judge issued a Preliminary Recommendation recommending that Complainant's petition for hearing be denied.

B. David Teigen v. Department of Corrections, Colorado Territorial Correctional Facility, State Personnel Board case number 2005G076(C).

Complainant, a certified Case Manager III employed by the Department of Corrections, filed a petition for hearing on February 2, 2005, arguing that he was denied relief in a Step II grievance decision and that the final grievance decision was arbitrary and capricious because: 1) there are ongoing illegal personnel practices relating to blacklisting and retaliation as found in State Personnel Board Case No. 2003B127; 2) following the evidentiary hearing in his appeal of the abolishment of his position as Case Manager III, State Personnel Board Case No. 2003B127, Territorial Correctional Facility filled a Correctional Manager V position and refused to consider Complainant and appoint him; 3) Complainant performed the duties of a Correctional Manager V at Territorial and was on the eligibility list for the position, but he was never advised of the position's availability, his name was never submitted for consideration, and he was never interviewed for the position; 4) this was part of the blacklisting found to exist by Administrative Law Judge McClatchey in Complainant's case, State Personnel Board Case No. 2003B127, and is an ongoing practice of denying him a promotion. As relief, Complainant requests appointment to a Correctional Manager V position at a facility in Canon City that is agreeable to Complainant, an award of pay for the failure to promote retroactive to the date the position was filled, attorney fees and costs, imposition of discipline against those individuals responsible for perpetrating the blacklist, and an end to the retaliation.

Respondent argues that Complainant failed to meet his burden of showing that valid issues exist that merit a full hearing and that the Board should deny Complainant's Petition for Hearing because the position to which Complainant refers was not a vacancy. Instead, it was an occupied position at Fremont Correctional Facility which was loaned to a different facility, Colorado Territorial Correctional Facility.

On October 4, 2005, the Administrative Law Judge issued a Preliminary Recommendation recommending that Complainant's petition for hearing be denied.

C. Mark Schornack v. Department of Human Services, Pueblo Regional Center, State Personnel Board case number 2006G005.

Complainant, a certified Health Professional (HP) VI employed by the Colorado Department of Human Services (CDHS), Pueblo Regional Center (PRC) filed a petition for hearing on July 19, 2005, arguing that the final grievance decision was arbitrary and capricious because Respondent discriminated against him on the basis of sex.

Respondent argues that Complainant failed to meet his burden of showing that valid issues exist that warrant a full hearing and his claim of discrimination is without merit.

On October 6, 2005, the Administrative Law Judge issued a Preliminary Recommendation of the Administrative Law Judge recommending that Complainant's petition for hearing be granted on the following issues:

1. Did Respondent commit harassment based on gender against Complainant;
2. Did Respondent discriminate against Complainant based on gender in removing him from his Day Program Coordinator position, and did the agency engage in procedural irregularities or violations of law in that removal, thereby demonstrating pretext for intentional discrimination;
3. In view of the conduct Complainant alleges Weiser engaged in, is Complainant entitled to reinstatement of leave balances taken during stress related leave.

**V. INITIAL DECISIONS OR OTHER FINAL ORDERS OF THE ADMINISTRATIVE LAW JUDGES OR THE DIRECTOR**

- A. David Ruchman v. Department of Revenue, Enforcement Group, Hearings Division, State Personnel Board case number 2005B085 (September 26, 2005).

Complainant, a hearing officer, appealed his disciplinary termination, seeking reinstatement, back pay, benefits and attorney fees and costs, and alleging a violation of First Amendment political association rights. After hearing, the ALJ determined that Respondent did not meet its burden of proving that Complainant willfully violated its Emergency Action Plan and the two orders of his superiors to immediately evacuate the building by taking longer than he should have to evacuate; approximately two minutes does not equate to a willful refusal to evacuate. In addition, the ALJ found that Respondent failed to give candid and honest consideration to the significant mitigation before it in this matter, and erroneously considered a corrective action which should have been removed from Complainant's personnel file, rendering a decision that was arbitrary and capricious and a disciplinary action that was not within the range of reasonable alternatives. The ALJ concluded that Respondent did not terminate Complainant in part for exercising his First Amendment political association rights and attorney fees are not warranted. The ALJ rescinded Complainant's termination remanding the matter to the appointing authority to allow for alternate disciplinary or corrective action, not to exceed a thirty-day suspension without pay, and awarding Complainant back pay and benefits to the date of reinstatement.

[The deadline for appealing the Initial Decision of the Administrative Law Judge is October 26, 2005.]

**VI. REVIEW OF THE MINUTES FROM THE SEPTEMBER 20, 2005 PUBLIC MEETING OF THE STATE PERSONNEL BOARD**

**VII. ACKNOWLEDGMENTS**

**DECISIONS OF THE STATE PERSONNEL BOARD MADE AT ITS SEPTEMBER 20, 2005 PUBLIC MEETING:**

- A. Elaine Lanphier v. Department of Public Health and Environment, Laboratory Radiation Services, State Personnel Board case number 2003B017.

The Board voted to deny Complaint's Motion for One-Day Extension of Time to File Notice of Appeal as untimely, to grant Respondent's Motion to Dismiss, and to dismiss Complainant's appeal of the Initial Decision of the Administrative Law Judge.

- B. Freddie Montoya v. Colorado State University at Pueblo, State Personnel Board case number 2005B059.

The Board voted to grant Respondent's Motion to Strike Complainant's Exhibit A to his Appeal Brief and any reference thereto, to adopt the findings of fact and conclusions of law in the Initial Decision of the Administrative Law Judge, and to make the Initial Decision of the Administrative Law Judge an Order of the Board.

- C. Brenda Johnson v. Department of Human Services, State Personnel Board case number 2005G053.

The Board voted to adopt the Preliminary Recommendation of the Administrative Law Judge and to deny the petition for hearing.

## **VIII. REPORT OF THE STATE PERSONNEL DIRECTOR**

### **IX. ADMINISTRATIVE MATTERS & COMMENTS**

#### **A. ADMINISTRATIVE MATTERS**

- Budget Report and Revenue and Expense Report
- Cases on Appeal to the Board and to Appellate Courts
- Cases Scheduled for Preliminary Review
- Web Site Statistics: July 2005 - 41,297; August 2005 - 31,994; September 2005 - 29,147

#### **B. OTHER BOARD BUSINESS**

- Staff Activities

#### **C. GENERAL COMMENTS FROM ATTORNEYS, EMPLOYEE ORGANIZATIONS, PERSONNEL ADMINISTRATORS, AND THE PUBLIC**

### **X. PROPOSED LEGISLATION AND/OR RULEMAKING**

### **XI. EXECUTIVE SESSION**

#### **A. Case Status Report**

#### **B. Minutes of the September 20, 2005 Executive Session**

#### **C. Other Business**

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**NEXT REGULARLY SCHEDULED BOARD MEETINGS - 9:00 a.m.**

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| <b>November 15, 2005</b> | <b>Colorado State Personnel Board<br/>633 17th Street, Suite 1400, Courtroom 1<br/>Denver, CO 80202-3604</b> |
| <b>December 20, 2005</b> | <b>Colorado State Personnel Board<br/>633 17th Street, Suite 1400, Courtroom 1<br/>Denver, CO 80202-3604</b> |
| <b>January 17, 2006</b>  | <b>Colorado State Personnel Board<br/>633 17th Street, Suite 1400, Courtroom 1<br/>Denver, CO 80202-3604</b> |
| <b>February 21, 2006</b> | <b>Colorado State Personnel Board<br/>633 17th Street, Suite 1400, Courtroom 1<br/>Denver, CO 80202-3604</b> |
| <b>March 21, 2006</b>    | <b>Colorado State Personnel Board<br/>633 17th Street, Suite 1400, Courtroom 1<br/>Denver, CO 80202-3604</b> |
| <b>April 18, 2006</b>    | <b>Colorado State Personnel Board<br/>633 17th Street, Suite 1400, Courtroom 1<br/>Denver, CO 80202-3604</b> |
| <b>May 16, 2006</b>      | <b>Colorado State Personnel Board<br/>633 17th Street, Suite 1400, Courtroom 1<br/>Denver, CO 80202-3604</b> |
| <b>June 20, 2006</b>     | <b>Colorado State Personnel Board<br/>633 17th Street, Suite 1400, Courtroom 1<br/>Denver, CO 80202-3604</b> |